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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,272	01/02/2001	Thomas W. Astle	130-132	9126

21091 7590 09/04/2002

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EXAMINER

CINTINS, IVARS C

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 09/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/752,272

Applicant(s)

Astle

Examiner

Ivars Cintins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The claims are incomplete because they fail to recite sufficient structure to perform the recited functions. For example, claims 1 and 9 recite that the upper and lower seals are mounted in the housing "for up and down motion with respect thereto" but fail to positively recite any structural elements for moving these seals up and down. Similarly, the claims recite an "eluter instrument" but fail to positively recite any structure for introducing and removing an eluent from the device. Furthermore, these claims fail to positively recite any structural element for introducing and removing an SPE medium from the recited device, as would also appear to be required by the apparatus. Claim 4 is further indefinite because it recites a modification of the structure of an SPE medium, without the presence of such an SPE medium having been previously positively recited. Applicant should note that

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the term "for an SPE system" does not actually recite the presence of such an SPE system having an SPE medium contained therein.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 3, 5 and 6 are rejected under 35 U.S.C. 102(a) or (e) as being anticipated by Guirguis et al. (U.S. Patent No. 6,149,871). The reference discloses an apparatus comprising a housing having upper and lower moveable seals of the type recited (see col. 8, lines 15-22; col. 11, lines 62-66; col. 12, lines 6-9 and 65-67; and col. 13, lines 1-4 and 21-22); and this is all that is required by claims 1, 3, 5 and 6.

Claims 1, 3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Benesi (U.S. Patent No. 5,510,025). The

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reference discloses an apparatus comprising all of the recited structural elements and structural interrelationships (see col. 2, lines 32-34 and 41-45; and col. 11, lines 18-19); and this is all that is required by apparatus claims 1, 3, 5 and 6.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guirguis et al. or Benesi. Each of the references discloses the claimed invention with the exception of the recited "O-rings." However, since "O-rings" as sealing means are notoriously well known, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the system of either reference with such conventional O-rings, in order to adequately seal the treatment chamber in either of these reference systems.

Claims 9 and 10 would be allowed if amended to overcome the above rejection under 35 U.S.C. § 112. Claims 4, 7 and 8 would also be allowed if rewritten in independent form to include all

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of the limitations of the base claim and any intervening claims, and if further amended to overcome the above rejection under 35 U.S.C. § 112.

Astle (U.S. Patent No. 5,260,028) discloses a similar solid phase extraction system. Astle (U.S. Patent No. 5,648,266) teaches sealing a filter with O-rings (see col. 2, lines 35-37).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (703) 308-3840. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

The fax phone numbers for this art unit are: (703) 872-9311 for "Official" faxes after Final Rejection; (703) 872-9310 for all other "Official" faxes; and (703) 872-9492 for "Draft" and other "Unofficial" faxes.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.



Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
August 31, 2002